



Office of the Attorney General
State of Texas

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September 28, 1998

The Honorable Debra Danburg
Chair, Committee on Elections
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 98-083

Re: Conflict among three amendments by the
Seventy-Fifth Legislature to section 33.52 of the
Tax Code (RQ-1080)

Dear Representative Danburg:

You request an opinion on section 33.52 of the Tax Code, which concerns the foreclosure of a tax lien on real property, allowing the property to be sold to pay delinquent taxes.¹ You state that section 33.52 of the Tax Code was amended by three different bills during the Seventy-fifth Legislative Session. You believe that the amendments cannot be harmonized and ask which of the three amendments prevails over the others.

Section 33.52 implements article VIII, section 15 of the Texas Constitution, which states as follows:

The annual assessment made upon landed property shall be a special lien thereon; and all property, both real and personal, belonging to any delinquent taxpayer shall be liable to seizure and sale for the payment of all the taxes and penalties due by such delinquent; and such property may be sold for the payment of the taxes and penalties due by such delinquent, under such regulations as the legislature may provide.

Section 32.01 of the Tax Code provides that, "[o]n January 1 of each year, a tax lien attaches to property to secure the payment of all taxes, penalties, and interest ultimately imposed for the year on the property. . . ." ² With certain exceptions,³ taxes are due on receipt of the tax bill and are

¹Section 34.01 of the Tax Code governs the sale of property ordered sold pursuant to a foreclosure of a tax lien. *See also* Tax Code § 34.015 (alternate manner of sale by municipality).

²Tax Code § 32.01.

³*Id.* §§ 31.02(b), 31.03, 31.04.

delinquent “if not paid before February 1 of the year following the year in which imposed.”⁴ Delinquent taxes incur penalties and interest at the rates stated in section 33.01 of the Tax Code.⁵

Property taxes are the personal obligation of the person who owns or acquires the property on January 1 of the year for which the tax is imposed, and sale of the property does not relieve the person of this personal obligation.⁶ The lien is not extinguished if the property is acquired by a governmental body in whose hands it is exempt from taxes, but enforcement of the lien is suspended.⁷ If the property is subsequently acquired by someone in whose hands it is not exempt, the lien can then be enforced.⁸

Subchapter C of the Tax Code, chapter 33,⁹ governs the collection of delinquent taxes on real property by judicially foreclosing the tax lien. At any time after the tax becomes delinquent, a taxing unit may file suit to foreclose the lien securing payment of the tax.¹⁰ The suit, and the resulting foreclosure, is for penalties, interest, and costs as well as for delinquent taxes.¹¹ Section 33.52 provides that the judgment of foreclosure shall also apply to certain nondelinquent taxes. Prior to being amended by the Seventy-fifth Legislature, this section read as follows:

(a) If the court orders the foreclosure of a tax lien and the sale of real property, the judgment shall order that the taxing unit recover from the proceeds of the sale the amount of tax on the property for the current tax year prorated to the day of judgment.

(b) If the amount of tax for the current tax year has not been determined on the date of judgment, the court shall order recovery of the amount of tax

⁴*Id.* § 31.02(a).

⁵*See also* Tax Code § 33.07 (additional penalty for costs of collecting certain delinquent taxes if taxing unit has contracted with an attorney to collect taxes).

⁶*Id.* § 32.07.

⁷*Childress County v. State*, 92 S.W.2d 1011, 1016 (Tex. 1936); *Maverick County Water Control & Improvement Dist. No. 1 v. State*, 456 S.W.2d 204, 206 (Tex. Civ. App.--San Antonio 1970, writ ref'd); *State v. Bexar-Medina-Atascosa Counties Water Improvement Dist.*, 310 S.W.2d 641, 643 (Tex. Civ. App.--San Antonio 1958, writ ref'd); Attorney General Opinion JM-1085 (1989) at 1-2.

⁸*Bexar-Medina-Atascosa Counties Water Improvement Dist.*, 310 S.W.2d at 643.

⁹Tax Code § 33.42.

¹⁰*Id.* § 33.41(a).

¹¹*Id.* § 33.43(a)(5), (b); *see also* Tax Code §§ 33.46(b) (apportionment of taxes, penalties, interest, and costs in proportion to interest of owners of partitioned real property), 34.02 (proceeds of tax sale first applied to costs and remainder distributed to taxing units participating in sale in satisfaction of, taxes, penalties, and interest).

imposed on the property for the preceding tax year, prorated to the date of judgment.

This provision allowed the taxing unit to recover from the proceeds of the foreclosure sale a portion of the current year's taxes, which were not delinquent at the time of judgment.¹² They are due on receipt of the tax bill in the current year, but not delinquent until February of the following year. Subsection (b) provides a means for estimating the amount of current tax due, if it has not been determined by the date of judgment.

Section 33.52 was amended by three different bills enacted by the Seventy-fifth Legislature, each of which also amended one or more other Tax Code provisions concerning the foreclosure of tax liens.¹³ As amended by House Bill 3306 of the Seventy-fifth Legislature, section 33.52 of the Tax Code provides as follows:

(a) If the court orders the foreclosure of a tax lien and the sale of real property, the judgment *may* include foreclosure on any unpaid tax on the property for the current year.

(b) If the amount of tax for the current tax year has not been determined on the date of judgment, the court *may* order recovery of and foreclosure on the amount of tax imposed on the property for the preceding tax year.

(c) If the judgment does not provide for recovery of taxes imposed for the current tax year, or for recovery of estimated taxes that cannot then be calculated for the current year, the real property is subject to the taxes for the current tax year and to the lien that secures those taxes, and any subsequent purchaser takes the property subject to those taxes and the tax lien.¹⁴

Thus, while the former version of section 33.52 required the judgment to order the recovery from the proceeds of the sale a stated amount of current taxes, House Bill 3306 authorizes, rather than requires, the court to order recovery of current taxes. Moreover, former section 33.52 provided that only current taxes up to the date of judgment would be recovered from the proceeds of the land sale, while House Bill 3306 provides for recovering the entire unpaid tax for the current year. House

¹²In a suit to foreclose a lien securing payment of tax, a taxing unit must include in its suit all delinquent taxes on the property. Tax Code § 33.42(a). If the taxing unit's tax becomes delinquent after the unit files suit but before entry of judgement, the amount of the tax and any penalty and interest shall be included in the court's judgment. *Id.* § 33.42(b).

¹³We consider only those portions of the three bills that amend section 33.52 of the Tax Code.

¹⁴Act of May 25, 1997, 75th Leg., R.S., ch. 906, § 8, 1997 Tex. Gen. Laws 2854, 2855 (emphasis added).

Bill 3306 states that, if the current year's taxes are not recovered, the real property will be subject to a lien for those taxes, and the subsequent purchaser will take the property subject to the tax lien.¹⁵

As amended by House Bill 2587¹⁶ of the Seventy-fifth Legislature, section 33.52 provides as follows:

(a) If the court orders the foreclosure of a tax lien and the sale of real property, the judgment shall, *on the motion of the taxing unit*, order that the taxing unit recover from the proceeds of the sale the amount of tax on the property for the current tax year.

(b) If the amount of tax for the current tax year has not been determined on the day of judgment, the court shall, *on the motion of the taxing unit*, order recovery of the amount of tax imposed on the property for the preceding tax year.

(c) If taxes for the current year are not included in the judgment, the tax sale does not affect:

- (1) the lien securing the taxes for the current year; or
- (2) the personal liability of the owner of the property for the taxes for the current year.¹⁷

Under House Bill 2587, the recovery of current property taxes from the proceeds of the sale is contingent on a motion by the taxing unit, and the recovery includes current taxes for the entire year. Subsection (c) in effect incorporates the law stated in section 32.01 of the Tax Code, that on January 1 of each year, a tax lien attaches to property to secure the payment of all taxes, penalties, and interest ultimately imposed for the year on the property. If the judgment does not order recovery of current taxes from the proceeds of the sale, the land remains subject to the tax lien for that year's taxes, penalties, and interest, and a subsequent purchaser will take the land subject to that lien.¹⁸

¹⁵The property would be subject to a lien for the uncollected current year's taxes, interest, and penalties, even without the express statement to this effect in House Bill 3306. See *Bexar-Medina-Atascosa Counties Water Improvement Dist.*, 310 S.W.2d at 643.

¹⁶Act of May 26, 1997, 75th Leg., R.S., ch. 1111, § 3, 1997 Tex. Gen. Laws 4246, 4246 (emphasis added).

¹⁷H.B. 2587, 75th Leg., R.S. (1997) (emphasis added).

¹⁸House Bill 2587 also adopted section 33.55 of the Tax Code, which provides that "[a] judgment for delinquent taxes does not affect the accrual after the date of the judgment of penalties and interest under this chapter on the taxes included in the judgment." Pursuant to section 33.01 of the Tax Code, a delinquent tax continues to incur the penalty provided by subsection 33.01(a) and the interest under section 33.01(c) "as long as the tax remains unpaid, regardless
(continued...)

Finally, House Bill 2622¹⁹ amends section 33.52 of the Tax Code to require the judgment to order that the taxing unit recover from the proceeds of the sale, in addition to current taxes prorated to the date of the sale, the taxes accruing for each subsequent tax year until the property is sold, and penalties and interest on delinquent taxes on the property from the date of the judgment to the date of the sale. This amendment reads as follows:

(a) If the court orders the foreclosure of a tax lien and the sale of real property, the judgment shall order that the taxing unit recover from the proceeds of the sale the amount of:

(1) tax on the property for the current tax year and each subsequent tax year until the property is sold under Section 34.01 or 34.015, as applicable, prorated to the date of the sale; and

(2) each penalty that is incurred and all interest that accrues on delinquent taxes on the property from the date of the judgment to the date of the sale under Section 34.01 or 34.015, as applicable.

(b) If the amount of tax for a tax year has not been determined on the date of the sale, the taxing unit shall recover the amount of tax imposed on the property for the preceding tax year, prorated to the date of the sale.

House Bill 2622 retains the mandatory language of former section 33.52 as to what the judgment should include and provides in addition to current taxes that all taxes accrued in the future until the time of sale will be collected from the proceeds of the foreclosure sale. This provision enables the taxing unit to receive payment for all taxes due it when the property is sold at the foreclosure sale and the person who buys it receives it free of any tax lien. House Bill 2622 also amends section 33.43(a) of the Tax Code, so that the petition will conform to the judgment as described in its amendment to section 33.52.²⁰

The three bills under discussion all relate to the payment from the proceeds of the foreclosure sale of taxes that are not delinquent at the date of judgment, but they differ as to which nondelinquent taxes are to be paid from the proceeds of the sale. House Bills 2587 and 3306 both permit payment of the unpaid tax on the property for the current year from those proceeds, while House Bill 2622 requires payment from the proceeds of all taxes accrued in the future until the time of the sale in addition to the current year's taxes.

¹⁸(...continued)

of whether a judgment for the delinquent tax has been rendered." Section 33.55 of the Tax Code thus merely reiterates the rule stated in subsections 33.01(a) and (c) of the Tax Code.

¹⁹Act of May 26, 1997, 75th Leg., R.S., ch. 981, § 2, 1997 Tex. Gen. Laws 3051, 3052.

²⁰*Id.* § 1, 1997 Tex. Gen. Laws 3051, 3052.

The bills also differ as to mandatory or permissive effect. House Bill 3306 states that the judgment *may* include foreclosure of current taxes, thus giving the judge discretion in this matter. House Bill 2587 provides that “the judgment shall, on the motion of the taxing unit, order that the taxing unit recover from the proceeds of the sale” the current year’s taxes, so that the taxing unit may decide whether or not the current year’s taxes shall be recovered from the proceeds of the sale. In contrast, House Bill 2622 requires the judgment to order recovery of current and future years’ taxes from the proceeds of the sale.

If amendments to the same statute are enacted at the same session of the legislature, without reference to one another, the amendments shall be harmonized, if possible.²¹ If they are irreconcilable, the latest in date of enactment prevails.²² House Bills 2587, 2622, and 3306 each make different substantive changes to the same provisions of Tax Code section 33.52, and for that reason they cannot be harmonized. Thus, with respect to Tax Code section 33.52, the bill latest in date of enactment will prevail over the other two.

The date of enactment is the date on which the last legislative vote was taken on the bill enacting the statute.²³ House Bill 3306 was enacted on May 25, 1997,²⁴ while House Bills 2587 and 2622 were enacted on May 26, 1997.²⁵ Of the two bills enacted on May 26, House Bill 2622 was the later enacted.²⁶ Accordingly, with respect to Tax Code section 33.52, House Bill 2622 of the Seventy-fifth Legislature, as the later enacted provision, prevails over House Bills 2587 and 3306. The present text of section 33.52 is that adopted by House Bill 2622 of the Seventy-fifth Legislature.

²¹Gov’t Code § 311.025.

²²*Id.*

²³*Id.* § 311.025(d).

²⁴Act of May 25, 1997, 75th Leg., R.S., ch. 906, 1997 Tex. Gen. Laws 2854, 2858.

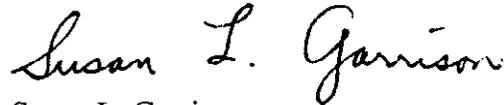
²⁵Act of May 26, 1997, 75th Leg., R.S., ch. 1111, 1997 Tex. Gen. Laws 4246, 4247; Act of May 26, 1997, 75th Leg., R.S., ch. 981, 1997 Tex. Gen. Laws 3051, 3053.

²⁶S.J. of Tex., 75th Leg., R.S. 3139 (1997); *see generally* Attorney General Opinion H-1115 (1978) (of two inconsistent statutes enacted on the same day, the later of the two will prevail).

S U M M A R Y

Section 33.52 of the Tax Code, relating to judgment foreclosing a tax lien on real property, was amended by three different bills during the Seventy-fifth Legislative Session. The three bills, House Bills 2587, 2622, and 3306, deal with collecting from the proceeds of the foreclosure sale the current taxes and other taxes on the real property that are not yet delinquent at the date of the judgment. The three bills differ as to their mandatory or permissive effect and as to which nondelinquent taxes will be collected from the proceeds of the foreclosure sale. Because the bills make different substantive changes to the same Tax Code provision, they cannot be reconciled. House Bill 2622, which requires the judgment of foreclosure to order that the taxing unit recover from the proceeds of the foreclosure sale the tax for the current tax year and each subsequent tax year until the property is sold, is the latest enacted of the three bills, and with respect to Tax Code section 33.52, it will prevail over the other two.

Yours very truly,



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Opinion Committee